

The complaint

Mr P complains Santander UK Plc (Santander) is holding him liable for unauthorised payments taken from his account.

What happened

The details of this complaint are well known to both parties, so I'll only provide a brief summary of events.

Mr P was arrested in early 2022. His lawyer has confirmed he was then in police custody or detained on remand until being released on 17 January 2023.

On his release, Mr P says he found unauthorised payments had been taken from several bank accounts he held – including his Santander account. The disputed payments in to, and taken from, that account are as follows:

Date	Payment Method	Merchant/account name	Amount
03/01/2023	Card	"E"	-£120
04/01/2023	Card	E	-£2,000
05/01/2023	Card	E	-£2,000
06/01/2023	Card	E	-£1,000
11/01/2023	Transfer	E	-£100
11/01/2023	Transfer	E	-£900
13/01/2023	Credit	Mr P	£1,800
13/01/2023	Transfer	E	-£1,200
13/01/2023	Credit	"M" – a loan provider	£1,000
14/01/2023	Credit	E	£1,000
14/01/2023	Transfer	E	-£1,000
14/01/2023	Transfer	E	-£500

Mr P disputed the payments with his banks. Most refunded him, but Santander didn't. It said the payments were made/authenticated using Mr P's device, and it couldn't establish how this could have been accessed without his involvement. Unhappy with this response, Mr P referred the matter to our service. He said he didn't make or agree to the payments.

Our investigator found the transfers had been made from Mr P's registered device, and some card payments had been authenticated using One Time Passcodes (OTPs) sent to his registered phone number. They also found Mr P's mobile banking details had been reset prior to the first disputed bank transfer (but after the first card payment to E) – requiring access to his phone and card number.

Mr P explained he left his phone with a friend I'll refer to as "V", who told him they kept it at the home of a family member. Mr P says V was looking after his house and car, so he gave them his card and PIN so they could withdraw cash to pay for bills etc. But he didn't share any security details (such as passwords) with V, or anyone else, to allow them access to his phone or mobile banking app. He also said that when V returned his phone, it was broken and unusable.

When the investigator asked Mr P how he found out about the transactions, he said he used a Santander ATM and his balance was lower than expected. He also said he had to reset his online banking password to access his mobile banking on his old phone (as the one he left with V was no longer working).

Santander says its records don't show Mr P using an ATM between his release and when he disputed the payments, nor of him resetting his login details. Yet he was able to send a payment of £1,100 to V on 19 January 2023 shortly before reporting the dispute.

Overall, given the access required, the investigator thought the payments had likely been made by someone Mr P had given authority to – so didn't uphold the complaint. Mr P appealed, so his case was passed to me.

Mr P provided a letter from his network provider which said his phone hadn't been used with his registered number since 25 February 2022. I asked for a bit more information about his phone/network use – and he provided:

- Phone bills from February 2022 to January 2023: These showed use of calls, texts and internet on his account up to 28 (not 25) February 2022 – followed by further internet use on 2 March 2022. The account then wasn't used until late December 2022, when Mr P's voicemail was accessed and there was some internet data use. From 1 to 14 January 2023, his bill shows various use of texts, calls and internet data.
I asked Mr P if he could provide anything further to explain how his number was used after 25 February 2022, if not via his usual device. He hasn't been able to provide anything further.
- A letter from his network provider saying his account was blocked on 22 March 2023 due to him reporting the loss of the phone: I asked Mr P why he had reported the broken phone as lost. He said he gave it back to V as he was using his old phone, and he was only allowed one under his licence conditions. But V then told him the phone had been taken during a burglary. Mr P says he doesn't think V reported the burglary to the police, although other items were taken.

I also contacted the loan provider, M, about the £1,000 paid into Mr P's account. It confirmed this was a loan taken out in Mr P's name. He reported it as fraudulent, but they held him liable. They said an image of Mr P's driving licence had been submitted during the application – yet he still had this in his possession when reporting his dispute in May 2024. When I asked Mr P about this, he said he left his licence with V while he was in prison.

I also asked Mr P why he sent V a payment of £1,100 on 19 January 2023, shortly before reporting his dispute to Santander. He said he did it to keep his remaining money safe when he saw all the disputed payments that had been taken – and V later returned the money. He has also told me that, while V has denied all knowledge of/complicity in what happened, Mr P thinks V was involved. He hasn't spoken to the police about this.

In November 2024 I issued my provisional decision explaining why I wasn't minded to uphold this complaint:

To complete and fund the payments Mr P is disputing, an unauthorised person would have needed have known and/or had access to his card details, mobile phone, and his driving licence. It's notable he says all of these items had been left with V.

Mr P has now suggested V made these payments without his authority. My role is to decide what is more likely to have happened on the balance of probabilities. There are a few reasons why I don't consider it likely V could have done all of this without Mr P granting him further access/authority.

Mr P has confirmed he allowed V to use his card and PIN. So, any payments V made using only those details would be considered authorised. That applies even if Mr P was not aware of the specific transactions in advance; by granting V access to his card and PIN, he was effectively granting V authority to use those details to make payments.

However, aside from the first payment, all the other disputed payments required access beyond the use of Mr P's card details. The remaining card payments were validated via mobile banking, using OTPs sent to Mr P's registered phone number. And other payments were sent as transfers from his mobile banking. Mr P says he didn't allow V – or anyone else – access to this.

I am conscious Mr P's login details were reset on 4 January 2023, as can be seen from Santander's audit information. However, doing that required access to his mobile phone and card details. And Mr P disputes sharing any details which would have allowed someone access to his phone.

I'm aware Mr P has provided a letter from his network provider saying his device hadn't been used since February 2022. But Santander's records do appear to show that device being used to make the payments – or at least the same device he was using immediately prior to going to prison.

Furthermore, I have seen information from Mr P's network provider showing account use in connection with his mobile phone number from December 2022 onwards, covering the period of the disputed payments. I haven't been given anything else to account for how this use was done, if not on his usual device.

Mr P says he has struggled to get further information about this from his network provider. He has asked whether our service could obtain this on his behalf. However, I've explained our service must act impartially – and would also have no authority to compel his network provider to respond.

Overall, weighing up the available evidence, I don't think it holds up that someone else would have been able to get access to Mr P's device or phone number without further access being granted.

Mr P was also able to log in to his account on 19 January 2023, when he sent £1,100 to V. He says he did this using an old device, as the phone he had left with V wasn't working. That matches Santander's audit records – as the login links to a device which had been used to access his account previously, but not for some time. But while he says he had to reset his login details to gain access at this point, that doesn't match Santander's records.

This is significant as Santander's audit information shows Mr P's login details were reset during the period of the disputed transactions. But there is no record of them being reset between his release and when he made this payment. So it's unclear how Mr P would have known the amended login details, if these had been changed without his involvement.

Mr P also told us previously that he found out about the transactions when using a Santander ATM. However, again, Santander's audit information doesn't show any ATM use during the relevant period. I appreciate Mr P now says he may be confusing this with another account – given that there were disputed payments on several accounts. But that does mean there are at least two occasions when Mr P has told us something which has been contradicted by the audit information.

It does also strike me as odd that Mr P would see unexpected activity on his account, including card payments and mobile banking transactions – and would then send funds to the person with whom he had left his card and phone. Or that he would subsequently return the (broken) phone to that person only to report it lost to his network provider a few weeks later. If that phone was unusable, as has been claimed, it's unclear why he would have kept it at all – or why he would have needed to block it.

Overall, I don't think there is a likely and plausible explanation for how V – or another third party – could have got the access needed to make these payments without Mr P's involvement. I therefore don't consider it unfair that Santander has held him liable.

I invited both parties to submit any further comments or evidence. Santander confirmed it had nothing to add, but Mr P responded to disagree with my findings. In summary, he said:

- He sent the £1,100 payment to V on 19 January 2023 as, at that point, he didn't know where the money had gone and didn't want to risk anything else being taken from his account. At the time he didn't suspect V might be involved.
- Mr P says he is willing for us to contact V, and this willingness confirms he wasn't involved
- He has gone to local police about the matter, and they have referred him on to Action Fraud

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've decided not to uphold it. That is largely for the reasons given in my provisional findings – which are set out above and form part of my final decision. So, I'll focus here on responding to the points Mr P has raised in response to my provisional decision.

I acknowledge what Mr P has said about why he paid V on his release. However, this explanation doesn't address the point about how he was able to get the access needed to make this payment. Santander's records show the login was reset during the disputed activity. Yet its records also show Mr P was able to login without completing a reset on his release.

While Mr P says he is willing for us to contact V, I'm not persuaded doing so is necessary to reach a fair outcome on this case. Nor do I agree this willingness *confirms* Mr P wasn't involved. As highlighted in my provisional findings, looking at the disputed activity and what happened afterwards, I'm not persuaded I have a likely explanation for how an unauthorised person could have got the access required to make these payments. And that is the basis on which I need to make my decision; I can't be certain about what happened, so I must decide what is more likely than not to have happened.

I appreciate Mr P says he has gone to the police and been referred to Action Fraud. What is less clear is whether he has discussed with them about a specific perpetrator. If material new evidence comes to light at a later date to support his fraud claim (such as from a police investigation), he can ask Santander to reconsider – and may ultimately be able to refer the matter back to us if he is unhappy with its response. But as things stand, on balance, I don't consider it fair to direct Santander to reimburse him.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 January 2025.

Rachel Loughlin
Ombudsman